## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

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§	CIVIL ACTION NO. 2:10-CV-00279-JRG
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## MEMORANDUM OPINION AND ORDER

Opti has, by means of its Rule 59(e) Motion to Amend the Court's September 9, 2013

Judgment (Dkt. No. 311), raised the issue of ongoing royalties. A procedure for negotiating ongoing royalties has been approved for patent cases in which the future royalties have not been adjudicated at trial. See Paice v. Toyota Motor Corp., 504 F.3d 1293, 1313-16 (Fed. Cir. 2007); see also Telecordia Techs., Inc. v. Cisco Sys., Inc., 612 F.3d 1365, 1378-79 (Fed. Cir. 2010). Without addressing the merits of Opti's Rule 59(e) Motion to Amend (Dkt. No. 311), the Court views negotiation between the parties as the appropriate course to follow in this case. The Court directs the parties to engage in good-faith negotiation directed at reaching an agreement as to the rate for ongoing royalties in the event that the jury's verdict as to past royalties is sustained.

The parties will be given 30 days to attempt to come up with an agreed-upon royalty rate. If, at that time, the parties have made progress toward agreement, they may ask the Court for additional time to reach agreement if both parties agree that the additional time would likely be productive. Of course, any agreement that the parties may reach as to the royalty rate will not limit either party from

challenging any other aspect of the proceedings in the pending appeal. The parties shall file a joint report setting forth their progress in this regard not later than 30 days from this date. If either party believes the assistance of the designated mediator, William Cornelius, Jr., would be helpful in such negotiations, the Court will entertain a separate request to order his participation in this process.

So ORDERED and SIGNED this 24th day of September, 2014.

RODNEY GILSTRAP

UNITED STATES DISTRICT JUDGE